

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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ARTURO TORRES OCHOA,

Plaintiff,

v.

T. EDWARDS et al.,

Defendants.

Case No. 3:15-cv-00099-MMD-VPC

ORDER

I. DISCUSSION

Plaintiff is a prisoner proceeding *pro se*. Plaintiff has submitted a civil rights complaint pursuant to 42 U.S.C. § 1983 and a partial application to proceed *in forma pauperis*. (Dkt. no. 1-1, 1-2.) However, on at least three (3) occasions, the Court has dismissed civil actions commenced by Plaintiff while in detention as frivolous or for failure to state a claim upon which any relief may be granted.¹

Pursuant to 28 U.S.C. § 1915(g), “if [a] prisoner has, on 3 or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted,” he may not proceed *in forma pauperis* and, instead, must pay the full \$400.00 filing fee in advance unless he is “under imminent danger of serious physical injury.” 28 U.S.C. § 1915(g).

¹See *Ochoa v. Cook et al.*, 3:02-cv-450-LRH-VPC; *Ochoa v. Willis et al.*, 3:02-cv-545-ECR-VPC (both dismissed for failure to state a claim upon which relief may be granted); *Ochoa v. Putter et al.*, 3:10-cv-364-HDM-RAM (dismissed as delusional and factually frivolous). The Court takes judicial notice of its prior records in the above matters.

1 In his complaint, Plaintiff appears to allege his dissatisfaction with the prison
2 food. (See *generally* dkt. no. 1-1.) The Court finds that these allegations fail to plausibly
3 allege that Plaintiff is in imminent danger of serious physical injury. See *Andrews v.*
4 *Cervantes*, 493 F.3d 1047, 1055 (9th Cir. 2007) (holding that the exception to § 1915(g)
5 applies if the complaint makes a plausible allegation that the prisoner faced imminent
6 danger of serious physical injury at the time of filing). To the extent that Plaintiff is
7 alleging that prison officials are poisoning his food, the Court notes that Plaintiff has filed
8 several complaints in the past making those same allegations and that the Court finds
9 that such allegations are delusional and factually frivolous. As such, Plaintiff must pre-
10 pay the \$400.00 filing fee in full.

11 **II. CONCLUSION**


12 For the foregoing reasons, it is ordered that Plaintiff's partial application to
13 proceed *in forma pauperis* (dkt. no. 1-2) is denied.

14 It is further ordered that this action will be dismissed without prejudice unless
15 Plaintiff pays the \$400.00 filing fee in full within thirty (30) days of entry of this order.

16 It is further ordered that the Clerk of the Court shall send Plaintiff two (2) copies
17 of this order. Plaintiff shall make the necessary arrangements to have one (1) copy of
18 this order attached to the check paying the filing fee.

19 It is further ordered that the Clerk of the Court shall retain the complaint (dkt. no.
20 1-1).

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22 DATED THIS 19th day of February 2015.

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MIRANDA M. DU
UNITED STATES DISTRICT JUDGE